

Reserved
(On 24.10.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
(Circuit Sitting at Nainital)

Dated: This the **26th** day of **November** 2018

Original Application No. 331/00072 of 2015

Hon'ble Mr. Justice Bharat Bhushan, Member – J
Hon'ble Mr. Gokul Chandra Pati, Member – A

Rameshwar Dass Garg, S/o Late Om Prakash Garg, R/o House No. T – 11 – B, Sai Sai Society New Adarsh Nagar (Old Gas Godown), Roorkee, Haridwar – 247667.

. . . Applicant

By Adv: In person

V E R S U S

1. Union of India, through Secretary and Chairman, Governing Body, National Institution of Hydrology, Ministry of Water Resources Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Director of National Institution of Hydrology, Roorkee, District – Haridwar – 247667.
3. Senior Administrative Officer of National Institution of Hydrology, Roorkee, District – Haridwar – 247667.

. . . Respondents

By Adv: Shri L.P. Tiwari

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The OA has been filed under section 19 of the Administrative Tribunals Act with prayer for the following main reliefs:-

- “i. Quash and set-aside the impugned order dated 29.02.2016 (Annexure No. 10 (A)) by which the final decision taken in the matter of the disciplinary proceedings initiated against the petitioner the respondent illegally imposed a punishment order in the nature of minor penalty by which Rs. 49,828/- has deducted in a single installment from the dues of pending payments of the applicant and subsequent Office order dated 09.03.2016 passed by Sr. Admn.

Officer, to the extent deduction of amount of Rs. 49,828/-.

- (i)a.) The interest on delayed payment of Leave Encashment and gratuity from the due date of (that is 01.01.2013) to the date of payment made (i.e. 31.01.2014) at the rate of 12% per annum.
- i b. The interest on delayed payment of C.P.F. from the due date of (that is 01.01.2014) to the date of payment made (i.e. 31.01.2014) at the rate of 12% per annum.
- i.c. The interest on the amount with held (94,156) from the due date that is 01.01.2013 to the date of payment at the rate of interest 18% per annum.
- i.d. Issue order or direction appropriate in nature by directing the respondents authorities to refund the deducted amount from the retire benefit of the applicant with 18% interest per annum. And further issue an order or direction for awarding damages to the applicant in tune of Rs. 50 Lacks, on account of arbitrary and malicious act of the respondents, due to which the applicant suffering from mental, financial and social agony and lost dignity.
- ii. Direct the respondents to pay the amount of Rs. 94,156.00 with interest at the rate of 12% per annum which has been illegally withheld and to pay the 12% interest per annum on the delay payment on the total amounts from the date of retirement to the date of actual payment;"

2. The applicant was appointed as Junior Assistant under the Ministry of Home Affairs on 12.12.1978 and on 2.04.1985, he was on deputation to National Institution of Hydrology (in short NIH), which is under the Ministry of Water Resources, Government of India. Subsequently, he was absorbed in NIH with effect from 1.10.1987.

3. The applicant was issued a charge memorandum dated 3.04.2007 alleging negligence on the part of the applicant in purchase due to which there was extra payment by the respondents. But the proceeding was not concluded by the time the applicant retired on superannuation on 31.12.2012 vide order dated 13.12.2012 (Annexure A-3 to the OA). It is stated in the OA

that the applicant was not paid his post-retiral benefits. The applicant submitted a representation dated 4.7.2013 before the respondent no. 3 requesting for payment of his retiral benefits. The respondents vide order dated 22.1.2014 (Annexure A-1), decided to withhold an amount of Rs. 94,156 from the retiral benefits while releasing the balance amount to the applicant after much delay after his retirement.

4. It is further stated in the OA that the under secretary issued an order to change the Disciplinary Authority with approval of the respondent no.1 and that the pending disciplinary proceeding cannot be finalized without approval of the President of India to continue the proceedings against a retired employee. The applicant submitted a representation on 9.12.2014 addressed to the under secretary stating that the disciplinary proceeding cannot be finalized after his retirement and it should be closed. The inquiry report dated 21.3.2011 (Annexure A-2) was finalized and a copy was sent to the applicant through the forwarding letter dated 22.7.2015 (Annexure A-2 to the OA), asking him to submit his reply within 15 days. The applicant submitted his reply dated 11.8.2015 (Annexure A-9) reiterating his plea that the proceeding cannot continue against him after retirement and he requested for release of the withheld amount of Rs. 94,156 with interest.

5. It is submitted in the OA that the allegation against the applicant related to approval of the competent authority on 29.3.2003 and 31.3.2004 (Annexure A-11) by which the payment was released. Since the payment was done with approval of the competent authority, no allegation of loss to the respondent is made out against the applicant.

6. The respondents have filed Supplementary Counter Affidavit (in short SCA) on 19.12.2016 and 19.4.2017 and also filed one Misc. Application No. 71/2016 in reply to the OA, with following averments:-

(i) The competent authority (Secretary to Government of India) has issued an order dated 29.2.2016 (Annexure A-1 to the MA) by which an amount of Rs. 49,828/- has been ordered to be recovered from the applicant's retiral benefits, by way of imposing a minor penalty as per the rules and the balance withheld amount was to be released to the applicant. This order has been issued in compliance to the order dated 24.11.2015 of this Tribunal in this OA by which the order dated 22.1.2014 was stayed in respect to the withheld amount.

(ii) It is stated in the SCA filed on 19.12.2016 that as per the instructions dated 18.1.2011 of the Ministry of Finance, the rule 39 of the CCS (Leave) Rules, 1972 provides for withholding whole or part of the payment on account of encashment of leave temporarily so that if some money is to be recovered as a result of disciplinary proceedings, it can be adjusted. However, final withholding of the amount as a punishment will not be permissible. It is also mentioned that as per the instructions of DOPT, the amount should not be withheld as a matter of course and it should be done after considering the charges carefully. Hence, the action of the respondents to withhold the amount of Rs. 94,156/- from the retiral benefits is justified.

(iii) It is stated in the SCA filed on 19.4.2017 that as per the letter dated 10.3.2010 (Annexure SCA-2) that under the rule 9(2) of the CCS (Pension) Rules, 1972, when the proceeding is instituted before retirement, it will be concluded by the authority by which it was commenced and it will be deemed to be a proceeding under the rule 9. The case of withholding an amount of Rs. 94,156/- under the rule 343 of the CCS (Pension) Rules, 1972 and the case is not covered by the judgment cited by the applicant.

7. The applicant has filed Rejoinder Affidavit, denying the contention of the respondents in the pleadings and reiterating the averments made in the OA.

8. We have heard the applicant in person and Shri L.P. Tiwari, learned counsel for the respondents and also considered the

materials available in the pleadings on record and following judgments referred by the applicant in the pleading and at the time of hearing : -

- i. Dev Prakash Tiwari Vs. U.P. Cooperative Institutional Service Board, Lucknow & Ors – (2014) 7 SCC 260
- ii. D.D. Tiwari (D) through LRs Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors – AISLJ (X)2014(3) 118.
- iii. Judgment dated 31.03.2005 in Civil Appeal No. 2300/2005 – Canara Bank Vs. V.K. Awasthy.
- iv. Union of India & ors Vs. Prakash Kumar Tandon – AIR 2009 SC 1375.
- v. P.V. Mahadevan Vs. M.D, Tamil Nadu Housing Board – AIR 2006 Supreme Court 207.
- vi. State of Punjab & ors. Vs. Radiq Mashih (White Washer) – (2015) 4 SCC 334.
- Vii. Judgment dated 16.03.2009 in Criminal Appeal No. 471/2009 – Uma Nath Pandey & Ors. Vs. State of U.P. & Anr.

9. The incident relating to the charge against the applicant occurred when the applicant was working as Finance Officer on deputation from 25.2.2003 to 24.2.2006 and it related to the decision to purchase of LCD Projectors by NIH. It was investigated by the CVO who detected that excess payment was made to the concerned firm for which the applicant was responsible. The Director, NIH who is the disciplinary authority, initiated the departments proceedings with the issue of the charge-sheet dated 3.04.2007 and the matter was not finalized for more than five years till retirement of the applicant on 31.12.2012. The post-reiral benefits were not released by the respondents to the applicant because of the pendency of the disciplinary proceedings. Then the impugned order dated 22.1.2014 (Annexure A-1 to the OA) was passed releasing all the dues of the applicant after withholding an amount of Rs. 94,156/- because of the pending disciplinary proceedings. It is the case of the respondents that this amount was withheld under the rule 39 of the CCS (Leave) Rules, 1972. Finally, the Disciplinary Authority finalized the proceedings by passing the order dated 29.2.2016 by which the penalty of recovery of Rs. 49.828/- was imposed on the applicant, ordering that the balance withheld amount be paid to the applicant. Thus, the proceeding was finalized after the Tribunal passed the order

dated 24.11.2015 staying the action to withhold Rs. 94,156/- as per the order dated 22.1.2014. It was finalized after about 9 years from the date of initiation on 3.04.2007 and after more than four years of retirement of the applicant.

10. The applicant has referred to a number of judgments in which the disciplinary proceedings were held to be illegal due to various reasons like violation of the rules or the principles of natural justice. The applicant also contends that there is violation of the rule 9 of the CCS (Pension) Rules, 1972 since the proceeding against him was continued without approval of the President of India. The respondents have defended the action citing the rule 9(2) of the CCS (Pension) Rules, 1972 which states as under:-

“(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.”

11. It is seen from the Government of India's decisions (No. 3) listed after the rule 9 of the CCS (Pension) Rules, 1972 states as under:-

“(3) Final order under Rule 9 will be issued in the name of President. - It has been clarified in consultation with the Ministry of Home Affairs and the Law Ministry that the

function of the Disciplinary Authority is only to reach a finding on the charges and to submit a report recording its findings to the Government. It is then for the Government to consider the findings and take a final decision under Article 351-A, CSRs (Rule 9). In case Government decide to take action under Article 351-A, CSRs (Rule 9), in the light of the findings of the Disciplinary Authority, the Government will consult the Union Public Service Commission. If as a result of such consideration in consultation with the Commission, it is decided to pass an order, necessary orders will be issued in the name of the President.

2. The procedure outlined in the preceding paragraph will also apply to a case where the President functions as the Disciplinary Authority.

[G.I., M.F., O.M. No. F. 19 (9)-E. V/66, dated the 6th June, 1967.]”

12. It is clear from above decision of Government, the Disciplinary Authority is required to forward its findings to the Government and then considering such findings, an appropriate decision in the matter would be taken under the rule 9. It is not mentioned in the pleadings of the respondents if such a procedure was adopted. Further, the final order of penalty of recovery i.e. order dated 29.2.2016 does not mention if it is issued after approval of the President of India. Under the rule 9 of the CCS (Pension) Rules, 1972 read with the Government of India’s decision no.3 on the said rule, the penalty order under the rule 9 is required to be issued in the name of President of India. It is clearly not the case since the impugned order dated 29.2.2016 has not been issued in the name of the President of India and nothing is mentioned in the order to show that it has been issued after approval of the President of India as required under the rule 9 of the CCS (Pension) Rules, 1972. Hence, on this ground, the impugned order dated 29.2.2016 is not sustainable under law.

13. Further, it is seen that rule 73 of the CCS (Pension) Rules is required to be finalized prior to one year before the date of retirement. The said rule 73 states as under: -

“(1). For the dues other than the dues pertaining to occupation of Government accommodation as referred to in Clause (b) of sub-rule (3) of Rule 71, the Head of Office shall take steps to assess [the dues one year before] the date on which a Government servant is due

to retire on superannuation; or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.

(2). The assessment of Government dues referred to in sub-rule (1) shall be completed by the Head of Office eight months prior to the date of the retirement of the Government servant”

14. It is seen from the SCA filed by the respondents on 19.12.2016 that the respondents have withheld a amount of Rs. 94156/- from the leave encashment dues of the applicant under the rule 39(3) of CCS (Leave) Rules 73. Para 6 of the SCA quoting the instructions of DOPT in this regard states as under: -

“It is clear from the provisions of Rule 39(3) of CCS (Leave) Rules, 1972 as further clarified by DoPT, that leave encashment should not be withheld in respect of a retiring employee because of pendency of a departmental proceeding etc. as a matter of course. The charges against the officer should be carefully considered before deciding whether withholding of the amount of leave encashment due to the employee is necessary keeping in view the nature of charges against the individual. Such charges should refer to or imply a specific loss to the public money because of embezzlement or other acts of misconduct of the officer.”

From the above, it is clear that before the competent authority decides to withhold an amount from leave encashment, the charges etc. are required to be considered carefully covering the loss to the government and the amount should not be withheld in a routine manner.

15. It is seen from the impugned order dated 22.01.2014 (Annexure A-1 to the OA) that the amount of Rs. 94,156/- , which has been withheld from the dues of leave encashment of the applicant was double the amount involved in the disciplinary proceedings. Above order states as under: -

“In continuation to this office order No. 4/9/93-NIH/11157 dated 31.12.2012, approval of Competent Authority is hereby conveyed for following payment to Sri R.D. Garg, Section Officer on account of gratuity and leave encashment after withholding of double of inquiry proceeding amount of Rs. 94,156/-.....”

Hence, it is clear that the amount which has been withheld is double the amount of estimated loss which was known to the respondents. Therefore, the excess amount has been withheld from the dues of leave encashment of the applicant, which cannot be done in view of the instructions of DOPT, as cited in para 6 of the SCA extracted above. From this angle, withholding of Rs. 94,156/- was also not in accordance with law.

16. It is also seen that as per the Government of India's decision No. (24) listed after the rule 14 of the CCS (CCA) Rules, 1965, as per the DOPT letter dated 29.11.2012 (page 92-95 of Swamy's Compilation of CCS CCA Rules, 2017), time limit has been specified for completion of the departmental proceedings. These instructions have been clearly violated in this case and no explanation for delay in completing the proceeding has been mentioned by the respondents in their pleadings. This is particularly so, when due to such delay, a retired employee's dues are held up.

17. In view of the above discussions, we allow the OA and set aside the impugned order dated 29.02.2016 by which penalty of recovery Rs. 49,828/- was imposed on the applicant, since this order has been passed without approval of the competent authority, as specified under rule 9 of CCS (Pension) Rules, 1972 read with Govt. of India instruction as discussed in para 12 above. Similarly, the impugned order dated 09.03.2016 to give effect to the order dated 29.02.2016 is also set aside. The respondents are directed to pay Rs. 49,828/- which has been withheld from the retiral dues of leave encashment with interest of 8% per annum from the date of the applicant's retirement till the date of actual payment within a period of two months from the date of receipt of a certified copy of this order. In case any additional amount over and above Rs. 49,828/- is withheld from applicant's retiral benefits, the same shall also be paid to the applicant with interest, as stated above. No costs.

(Gokul Chandra Pati)

Member – A

Anand...

(Justice Bharat Bhushan)

Member – J